

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.389 OF 2006

Mohan T. Kakad

...Petitioner.

Versus

Nivrutti M. Ugale & Ors.

...Respondents.

Shri B.P.Abhale for the Petitioner.

Shri Z.M.Avhad for Respondent No.1.

Shri R.M.Patne, A.G.P for Respondent Nos.2 & 3.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 14th FEBRUARY, 2006.

P.C. :

1. Heard Shri Abhale appearing for the petitioner

and Shri Avhad appearing for respondent No.1. Shri

Patne appears for respondent Nos.2 & 3.

2. The petitioner challenges an order passed by the

Additional Commissioner, Nashik Division, Nashik dated
19th March, 2005, dismissing the revision application
preferred by the Grampanchayat of village Dapur,
Tq.Sinnar, Dist.Nashik. The Grampanchayat was
aggrieved by the order passed by the Additional
Collector, Nashik on 28th November, 2002 allotting a
open piece of land admeasuring 450.00 sq.mtrs, which
vested in the State, to the first respondent.

3. Although, this Petition is being preferred by a member of the Grampanchayat, it is not disputed before me that it is Grampanchayat, which had approached the Additional Commissioner through its Sarpanch, challenging the order of the Additional Collector.

4. I have perused the order passed by the Commissioner with the assistance of Shri Abhale appearing for the petitioner and Shri. Avhad appearing for the first respondent. The Additional Commissioner has disposed of the matter by following order :

" . I had gone through the case papers of Lower Courts & arguments put up before this Court.

. I fully agree with the order of Collector Nashik. There is no legal point involved in this petition. The order of Collector, Nashik is perfectly legal & correct. Grampanchayat has no right to take objection about Government land. It is the Collector who is competent for disposal of Government land."

5. My attention is invited by Shri Abhale to the provisions of Section 247 of the Maharashtra Land

Revenue Code. In his submission, the decision of the Collector is appealable under Section 247 read with Schedule E of the Land Revenue Code and the Commissioner, therefore, was obliged to treat the application preferred by the Grampanchayat as a statutory appeal and dispose it of in that manner.

6. Shri Avhad on the other hand submitted that appeal would lie only when the Collector was exercising any quasi-judicial power and passing orders which have civil consequences. In the instant case, his decision to allot the Government land to the first respondent cannot be said to be an appealable order. In any event, if the Grampanchayat is approaching the Additional Commissioner challenging the decision of the Collector rendered on 28th November, 2002, then, the application was time barred. It could not have been treated as an appeal. Instead it has been rightly dealt with as a revision.

7. In my view, neither is such objection raised and if raised by the first respondent, it does not appear that the same is considered.

8. In any event, I am of the view that the disposal of the matter by the Commissioner is not at all satisfactory. The manner in which the application has

been dealt with shows that the Commissioner has not applied his mind to the rival contentions. He has proceeded also to observe that Grampanchayat has no right to take objection over a Government land and it is the absolute authority of the Collector and he alone is competent to dispose of the Government land.

9. At this stage, without saying anything more, in my view, such observations overlook the basic character of a property which vests in the State for public good and in public interest. If under the relevant Grampanchayat Act and considering provisions of Part-IX and Part IX-A of the Constitution of India, the Village Panchayat has been put incharge of the management and administration of the lands in public interest and for public good, questioning its locus to assail the decision of allotment by-passing it can hardly be sustained. It would be better if the Commissioner deals with the matter more elaborately and assigns cogent and satisfactory reasons. The present cryptic order hardly meets requirements of the principles of natural justice. It deserves to be and it is accordingly set-aside.

10. The application preferred by the Grampanchayat is restored to the file of the Commissioner/Additional Commissioner, Nashik for disposal afresh on merits and

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in accordance with law. Needless to state that the application being preferred by the Grampanchayat shall be prosecuted by the Grampanchayat and none else. All contentions on merits of both sides, viz., Panchayat as well as respondent No.1, are expressly kept open. The Commissioner to endeavour and dispose of the application within a period of six weeks from the date of receipt of a copy of this order.

11. In the light of the order passed on the main Writ Petition, Civil Application does not survive and is accordingly disposed of.

(S.C.DHARMADHIKARI,J.)